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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Forty-ninth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 27th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 22 August 1997, at 3 p.m.

Chairman: Mr. BENGOA

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* The summary record of the second part (closed) of the meeting appears as document E/CN.4/Sub.2/1997/SR.27/Add.1.

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GE.97-13823 (E)

The meeting was called to order at 3.20 p.m.

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS (continued)

Draft resolutions and decisions relating to agenda item 4
(E/CN.4/Sub.2/1997/L.12, L.18, L.19, L.24 and L.26)

Draft resolution E/CN.4/Sub.2/1997/L.12 (Forced evictions)

1. Draft resolution E/CN.4/Sub.2/1997/L.12 was adopted.

Draft resolution E/CN.4/Sub.2/1997/L.18 (The realization of the right to education, including education in human rights)

2. The CHAIRMAN announced that Mr. Khalil and Mr. Guissé had joined the sponsors of the draft resolution.

3. Mr. MAXIM pointed out that it was his name that should appear on the list of sponsors and not that of his alternate, Mr. Motoc.

4. Mr. WEISSBRODT supported the draft resolution, but suggested that, before adopting it, the Sub-Commission should take a general decision on the criteria to be used in deciding priorities for the various proposed studies and working papers.

5. The CHAIRMAN said that by studies the bureau meant only reports and not working papers. In fact, the draft resolution merely provided for the preparation of a working paper.

6. Mr. ALFONSO MARTINEZ said the fact that a member of the Sub-Commission was given responsibility for preparing a working paper with no financial implications did not, in his opinion, prejudge any subsequent decision. As to draft resolution L.18, he proposed that in the second line of the seventh preambular paragraph the word "sufficiently" should be inserted between the words "been" and "dealt with".

7. Mrs. ATTAH said she did not understand why the Sub-Commission should concern itself with the question of the right to education, since it was dealt with specifically dealt with by a specialized agency of the United Nations, namely UNESCO.

8. Mr. MEHEDI supported the amendment proposed by Mr. Alfonso Martínez. Replying to Mrs. Attah, he said that there was nothing to prevent the Sub-Commission from discussing the right to education, especially since it was the link between that right and its corollary, education in human rights, that would be studied, as stated in the title of the draft resolution.

9. Mrs. GWANMESIA considered that the Sub-Commission should concern itself not only with the prevention of discrimination and protection of minorities, but with all human rights and hence the right to education, which was set forth in the Universal Declaration of Human Rights. She also supported Mr. Alfonso Martínez's proposal.

10. Mr. GUISSE considered that the proposed study was clearly within the competence of the Sub-Commission and that it would provide a means of defining and understanding the right to education more closely. However, he wondered how the link between that right and human rights teaching would be established.

11. Mr. DIAZ URIBE supported Mr. Alfonso Martínez's proposal and, in the light of Mr. Mehedi's observations, proposed that, in the same preambular paragraph of the draft resolution, the words "including education in human rights" should be inserted after the words "right to education".

12. Mr. YIMER said that the question whether the Sub-Commission was competent to deal with the right to education should not arise since it was not a treaty body. It dealt with all questions relating to not only the rights established in the International Covenants, but also - and above all - those set forth in the Universal Declaration of Human Rights. That was the case with the right to education, which was referred to in article 26 of the Universal Declaration.

13. Mrs. WARZAZI requested that, in the French text, wherever the word "notamment" appeared in the phrase "notamment l'éducation dans le domaine des droits de l'homme" it should be replaced by "y compris".

14. Draft resolution E/CN.4/Sub.2/1997/L.18, as orally amended, was adopted.

Draft decision E/CN.4/Sub.2/1997/L.19 (The right to food)

15. Mr. EIDE proposed that, after the words "in which" in the second line of draft decision L.19, the following words taken from the first preambular paragraph of Sub-Commission resolution 1996/25 should be inserted: "deeply concerned that more than 800 million people throughout the world, particularly in developing countries, do not have enough food to meet their basic nutritional needs".

16. Draft decision E/CN.4/Sub.2/1997/L.19, as orally amended, was adopted.

Draft resolution E/CN.4/Sub.2/1997/L.24 (The relationship between the enjoyment of economic, social and cultural rights and the right to development, and the working methods and activities of transnational corporations)

17. Mr. CHERNICHENKO said that he did not oppose the draft resolution, but doubted whether the Sub-Commission's proposal to establish an inter-sessional working group could be adopted by the Commission on Human Rights owing to its financial implications.

18. Mrs. WARZAZI considered that it was for the Commission to judge whether that proposal was realistic and that the Sub-Commission should take the risk of its decision being rejected.

19. Mrs. PALLEY said she wondered whether the members of the Sub-Commission had the necessary technical competence to serve in the proposed working group.

She emphasized the need for the services of economists and other specialists, and asked whether the cost of such assistance was provided for in the financial implications calculated by the secretariat.

20. Mr. BOSSUYT said he fully shared the reservations expressed by Mr. Chernichenko and Mrs. Palley. Noting that it was already difficult to find members representing the five regional groups to serve on the four currently functioning inter-sessional working groups and that it was necessary to call on the services of numerous alternates, he considered that the Sub-Commission had reached the limit of its capacity. He doubted whether the five specialists who would serve on the working group could be found among its members, and for that reason he recommended that the draft resolution should not be adopted.

21. Mr. YIMER said that reference was made, in the sixth preambular paragraph, to the concentration of economic and political power as one of the obstacles to the realization of the right to development, without specifying where that power was concentrated. If that text could not be improved or supplemented, it would be preferable to delete it. The seventh preambular paragraph should also be revised since, as currently worded, it seemed to limit the need for effective development policies to the national level and the need for equitable economic relations and a favourable economic environment to the international level. Obviously, those needs existed at both the national and international levels.

22. Mr. ALFONSO MARTINEZ supported Mr. Yimer's observations concerning the sixth and seventh preambular paragraphs. In order to dispel the apparent ambiguity in the sixth paragraph, he suggested that the words "in some societies" should be added at the end of the paragraph.

23. As to the proposal for the establishment of an inter-sessional working group, made in operative paragraph 3, it would of necessity have financial implications, but in the current world economic crisis it was essential to strike out along a new path. The existence of four other inter-sessional working groups should not be viewed as an obstacle, since experience had shown that there was no shortage of ability to do a very satisfactory job. That should reassure Mr. Bossuyt, who had expressed concern about the representation of the Group of East European countries, notably in those working groups.

24. Mr. EIDE said the draft resolution was premature in that the Sub-Commission was already overburdened with work and was not able to complete its agenda in four weeks. The Commission had also asked the Sub-Commission to take due account of the work of the other United Nations bodies. It would therefore be preferable for the Sub-Commission to first study the final report of Mr. Bengoa, the Special Rapporteur on the question of the relationship between the enjoyment of human rights, in particular economic, social and cultural rights, and income distribution (E/CN.4/Sub.2/1997/9), to see what progress was being made by the Commission's Intergovernmental Group of Experts on the Right to Development and to complete other outstanding studies. In view of the criticism often levelled at the Sub-Commission concerning the

organization of its work, it would seem wiser simply to decide for the moment to have a working paper prepared on the question, without financial implications and on the basis of the work of the Intergovernmental Group of Experts.

25. Mr. CHERNICHENKO said that draft resolution L.24 had a further shortcoming: it was not for the Commission to take the decision to establish an inter-sessional working group of the Sub-Commission. In that matter, the last word lay with the Economic and Social Council, which was not mentioned anywhere in the text. It would therefore be more sensible to defer the decision on the draft resolution and see how it could be revised along the lines suggested made by Mr. Eide.

26. Mr. YIMER agreed that the essential point was that the Sub-Commission must decide whether that draft resolution was necessary, but he emphasized that his observations concerning two preambular paragraphs related to substance. As to Mr. Alfonso Martínez's suggestion concerning the sixth preambular paragraph, it was, in his opinion, not sufficiently explicit; it would be better simply to speak of the concentration of economic and political power in the hands of a small number of countries and transnational corporations.

27. Mr. ALFONSO MARTINEZ suggested to Mr. Yimer that he should make a formal proposal concerning the sixth preambular paragraph. He was concerned at Mr. Eide's remarks about criticism of the Sub-Commission: the Sub-Commission was perfectly able to take initiatives without waiting for other bodies, such as the Intergovernmental Group of Experts on the Right to Development or the Committee on the Elimination on Racial Discrimination, which were not superior to it, to dictate its action. Otherwise, it might give the impression that it was not genuinely independent. The question of the activities of transnational corporations was obviously a very sensitive one and was distasteful to many. In any event, it was not the Sub-Commission that should discuss the question whether those corporations should continue to impose their own interests.

28. Mr. LINDGREN ALVES said that he appreciated the spirit, but not the letter of draft resolution L.24. Far from being premature, as Mr. Eide felt, the draft was anachronistic in that the Sub-Commission once again seemed to be looking for a scapegoat. In order to do more serious work, it was necessary to address from a philosophical standpoint the problem of current neo-liberal economic thinking, according to which all Governments wished to attract transnational corporations to their countries. He also regretted that no reference was made in the text to the Programme of Action adopted at the World Summit for Social Development in Copenhagen in 1995. Lastly, concerning the possible establishment of an inter-sessional working group, he agreed with Mr. Bossuyt that it was impossible for the experts to deal properly with technical questions so far removed from their concerns.

29. Mrs. ATTAH said it was apparent from the discussion that the draft resolution was not very clear. As one of the sponsors, she continued to support the draft in principle, but suggested that a decision on it should be deferred until the following year in order to enable the Sub-Commission to give further thought to the question.

30. Mrs. PALLEY said that would in fact be the wisest course. The question of transnational corporations was indeed within the Sub-Commission's mandate, but the study of the question required abilities and competence which members did not possess. Although she had taught company law and taken a particular interest in the question of transnational corporations, she did not feel any more capable than Mr. Bossuyt of studying such complex subjects. The question of transnational corporations must certainly be considered, but it remained to be seen whether the Sub-Commission was the most qualified body to do that.

31. Mr. ALI KHAN said that he wished his name to be withdrawn from the list of sponsors.

32. Mr. BOSSUYT agreed with Mrs. Attah that the Sub-Commission should not try to cut corners. Furthermore, it was perhaps not judicious to propose the establishment of the new inter-sessional working group at a time when the Sub-Commission was already calling for the extension of the mandate of the Working Group on Minorities.

33. Mrs. GWANMESIA said she wished to withdraw from the list of sponsors.

34. Mrs. WARZAZI considered that draft resolution L.24 was not so anachronistic as Mr. Lindgren Alves maintained. Since Mr. Eide thought that a working paper on the question would suffice, the sponsors might consult one another with a view to maintaining the proposed text up to and including operative paragraph 3. A decision on the rest of the text would be postponed until 1998 once Mr. Guissé's working paper on the subject had been submitted.

35. Mr. EIDE said that that would indeed be a solution. At its fiftieth session, the Sub-Commission might decide to establish an inter-sessional working group or consider other courses of action.

36. Mr. CHERNICHENKO reminded members that he had already proposed that the sponsors should consult one another on the revision of the text. There was no need to prolong the discussion any further.

37. The CHAIRMAN, summing up, said that three proposals had been made concerning draft resolution L.24: consideration should be deferred in order to enable the sponsors to consult and revise the text; the text up to and including operative paragraph 3 should be adopted; or a decision should be deferred until the following session, it being decided for the moment simply to ask Mr. Guissé to prepare a working paper on the question. He understood that the members of the Sub-Commission wished consideration of the draft resolution to be deferred, in order that the sponsors could revise it, as proposed by Mr. Chernichenko.

38. It was so decided.

Draft decision E/CN.4/Sub.2/1997/L.26 (Transmission of resolution 1996/22 of the Sub-Commission to the Secretary-General)

39. Mr. FAN Guoxiang said that the Sub-Commission should be able to adopt without a vote that very straightforward procedural decision in which it decided to transmit its resolution 1996/22 to the Secretary-General in order to obtain information relating to the realization of the right to development.

40. Draft decision E/CN.4/Sub.2/1997/L.26 was adopted.

Draft resolutions relating to agenda item 5 (E/CN.4/Sub.2/1997/L.15 and L.28)

Draft resolution E/CN.4/Sub.2/1997/L.15 (Traditional practices affecting the health of women and the girl child)

41. Mr. PARK, Mr. LINDGREN ALVES and Mr. GUISSE said they wished to join the sponsors of the draft resolution.

42. Draft resolution E/CN.4/Sub.2/1997/L.15 was adopted.

Draft resolution E/CN.4/Sub.2/1997/L.28 (Implementation of the human rights of women and the girl child)

43. Mr. GUISSE considered the expression "girl child" somewhat strange and wondered whether it would not have been preferable to speak of the human rights of women and children.

44. Mrs. GWANMESIA said she wished to join the sponsors of the draft resolution.

45. Mr. ALFONSO MARTINEZ proposed that, in operative paragraph 11, the words "in developing structural adjustment policies" should be replaced by "at all times". Referring to operative paragraph 1, he considered that the requests addressed to the authors of future studies to be submitted to the Sub-Commission were somewhat too numerous to be practicable, but he would not oppose adoption of the draft resolution by consensus.

46. The CHAIRMAN said that, if there was no objection, he would take it that the amendment proposed by Mr. Alfonso Martínez was adopted.

47. It was so decided.

48. The CHAIRMAN informed the Commission that Mrs. Palley and Mr. Alfonso Martínez wished to join the sponsors of the draft resolution.

49. Draft resolution E/CN.4/Sub.2/1997/L.28, as amended, was adopted.

50. Mr. KHALIL said that he had not wanted to oppose the adoption of the resolution by consensus, but he would have preferred the word "equality" in the eleventh preambular paragraph and operative paragraph 6 to be replaced by the word "equity". If those paragraphs had been put to a separate vote, he would have abstained.

Draft resolutions relating to agenda item 7 (E/CN.4/Sub.2/1997/L.27, L.29, L.30, L.31, L.34 and L.35)

Draft resolution E/CN.4/Sub.2/1997/L.27 (Study on treaties, agreements and other constructive arrangements between States and indigenous populations)

51. Mrs. DAES said that in that draft resolution the Sub-Commission urged the Special Rapporteur to submit his final report preferably before the end of 1997 so as to allow it to be discussed by the Working Group on Indigenous Populations at its sixteenth session and by the Sub-Commission at its fiftieth session. She proposed that the draft resolution should be adopted without a vote.

52. Draft resolution E/CN.4/Sub.2/1997/L.27 was adopted.

Draft resolution E/CN.4/Sub.2/1997/L.29 (Permanent forum in the United Nations for indigenous peoples)

53. Mrs. DAES said that one member of the Working Group on Indigenous Populations had proposed the following amendment to the text of the draft decision (contained in draft resolution L.29, operative paragraph 3) which the Sub-Commission was recommending for adoption by the Commission on Human Rights: "The Commission on Human Rights requests the Working Group on Indigenous Populations to focus on the question of membership, participation and mandate of a possible permanent forum for indigenous peoples with a view to the early establishment of such a forum within the present structure of the United Nations, preferably under the Economic and Social Council". She requested that that amendment should be approved since it was fully in keeping with the recommendation adopted by the Working Group.

54. Mr. GUISSE, speaking as a sponsor of the draft resolution and a member of the Working Group, said that he supported that amendment.

55. Mr. YOKOTA, drawing the attention of members to the wording of operative paragraph 7 of draft resolution E/CN.4/Sub.2/1997/L.30, proposed that the wording of that draft should also be used in operative paragraph 1 of draft resolution L.29, which would therefore read:

> "Recommends that the permanent forum for indigenous peoples within the United Nations system be established as soon as possible in the course of the Decade".

56. Mrs. DAES said that she fully supported that amendment.

57. Mr. ALFONSO MARTINEZ said he found Mr. Yokota's proposal perfectly acceptable. He requested that the names of members of the Working Group should be added to the list of sponsors of draft resolution L.29.

58. The CHAIRMAN informed the Sub-Commission that Mr. Weissbrodt had also joined the sponsors of the draft resolution.

59. In reply to a question by Mr. BOSSUYT, Mrs. DAES said that the words "preferably under the Economic and Social Council", which appeared in the

amendment to paragraph 3 of the draft that she had read out, reflected the wish expressed by the participants in the workshops in Copenhagen and Santiago (Chile) that the permanent forum should be situated at a high level within the United Nations structure and be directly subordinate to the Economic and Social Council.

60. Mrs. PALLEY and Mr. LINDGREN ALVES said that they would not oppose the adoption of the draft resolution without a vote, but wished to express reservations concerning the words "preferably under the Economic and Social Council", which, in their opinion, it would have been wiser to delete.

61. Draft resolution E/CN.4/Sub.2/1997/L.29, as amended, was adopted.

Draft resolution E/CN.4/Sub.2/1997/L.30 (International Decade of the World's Indigenous People)

62. Mrs. DAES proposed that the following two new preambular paragraphs should be added after the second preambular paragraph of draft resolution L.30:

> "Convinced that the science of biology and progress and development in biological sciences must be in the interests of human beings and human life, and not vice versa,
>
> "Deeply concerned that our understanding of human nature has been significantly modified by the rapid rise of developments in biotechnology as a science, particularly in the modification, removal and replacement of genes, and that indigenous people are most vulnerable to the risk of being singled out for human genetic research and human gene patenting by the biotechnology industry".

63. She further proposed that the following two new operative paragraphs should be added after operative paragraph 8:

> "9. Takes note of the work of UNESCO in the field of the human genome in the completion of the Preliminary Draft of a Universal Declaration on the Human Genome and Human Rights, a standard-setting framework urgently needed to ensure that such research and its applications are developed in a harmonious way that demonstrates regard for human dignity, in particular for the dignity and way of life of indigenous peoples;
>
> "10. Recognizes the need for a systematic analysis of the problems faced by indigenous peoples where matters of biodiversity, genetics and the use of biological resources and sustainability are being discussed, negotiated and determined, in order to protect indigenous peoples' cultures, way of life and survival within the programme of action for the International Decade".

64. Mr. YOKOTA proposed that operative paragraph 7, which duplicated operative paragraph 1 of draft resolution E/CN.4/Sub.2/1997/L.29, should be deleted.

65. The CHAIRMAN said that, if there was no objection, he would take it that the Sub-Commission accepted that proposal.

66. It was so decided.

67. The CHAIRMAN informed the Sub-Commission that Mr. Weissbrodt had joined the sponsors of the draft resolution.

68. Draft resolution E/CN.4/Sub.2/1997/L.30, as amended, was adopted.

Draft resolution E/CN.4/Sub.2/1997/L.31 (Study on indigenous land rights)

69. The CHAIRMAN informed the Sub-Commission that Mrs. Palley, Mr. Eide, Mr. Alfonso Martínez, Mr. Diaz Uribe, Mr. Weissbrodt and Mr. Yimer had joined the sponsors of the draft resolution.

70. Draft resolution E/CN.4/Sub.2/1997/L.31 was adopted.

Draft resolution E/CN.4/Sub.2/1997/L.34 (Protection of the heritage of indigenous people)

71. The CHAIRMAN announced that Mr. Alfonso Martínez and Mr. Diaz Uribe had joined the sponsors of the draft resolution.

72. Draft resolution E/CN.4/Sub.2/1997/L.34 was adopted.

Draft resolution E/CN.4/Sub.2/1997/L.35 (Working Group on Indigenous Populations)

73. The CHAIRMAN announced that Mr. Alfonso Martínez, Mr. Eide, Mr. Yimer and Mr. Weissbrodt had joined the sponsors of the draft resolution.

74. Draft resolution E/CN.4/Sub.2/1997/L.35 was adopted.

75. The CHAIRMAN informed the Sub-Commission that the consultations on draft resolution E/CN.4/Sub.2/1997/L.24 (The relationship between the enjoyment of economic, social and cultural rights and the right to development, and the working methods and activities of transnational corporations) submitted under agenda item 4 had been completed. He therefore invited members to resume consideration of that text.

76. Mrs. WARZAZI said that it had been decided to mention, at the end of the fourth preambular paragraph, the Declaration and Programme of Action of the World Summit for Social Development of 1995. In the sixth preambular paragraph, the words "in a few countries and corporations" should be added after the words "concentration of economic and political power". The seventh preambular paragraph should be amended to read: "Noting also that lasting

progress towards the implementation of the right to development requires effective development policies and a favourable economic environment at both the national and international levels". Lastly, in operative paragraph 3, the words "and to the Working Group referred to below" should be replaced by the words "at its fiftieth session". As amended, the draft resolution could be adopted without a vote.

77. The CHAIRMAN announced that Mr. Diaz Uribe and Mrs. Gwanmesia had joined the sponsors of the draft resolution.

78. Draft resolution E/CN.4/Sub.2/1997/L.24, as amended, was adopted.

The public part of the meeting rose at 5.20 p.m.